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By CM/ECF

January 19, 2024

The Honorable Yvonne Gonzalez Rogers
Ronald V. Dellums Federal Building & United States Courthouse
1301 Clay Street
Oakland, CA 94612

Re: *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, MDL No. 3047*

Dear Judge Gonzalez Rogers:

Plaintiffs have alleged general causation in their Master Complaint, and the law requires them to prove it with expert testimony that satisfies Rule 702. Deciding earlier the case-wide issue of whether Plaintiffs meet that burden will promote the efficient resolution or narrowing of this MDL. In resisting this view, Plaintiffs (1) cite inapplicable cases that reject a form of general causation phasing different from what Defendants propose here; (2) argue that general causation is indivisible from other issues, contradicting arguments they made to obtain this MDL; and (3) suggest that entering a schedule prioritizing general causation challenges would prejudge the Rule 702 question, even as they ask the Court to accept their causation arguments as so strong as to be beyond challenge. None of these arguments has merit.

I. Plaintiffs' Case Law Does Not Apply.

Defendants have been clear that they are not seeking to stay or limit discovery as Plaintiffs contend. Instead, Defendants seek an earlier and separate resolution of Rule 702 challenges to Plaintiffs' general causation experts, with sufficient time for Plaintiffs to take whatever fact discovery they feel may bear on that issue. That fact alone renders inapplicable all but one of Plaintiffs' cited cases rejecting causation phasing in MDLs.¹ Moreover, Plaintiffs' cases stand in contrast to the modern practice of addressing general causation early, *see* Defs.' Letter at 5 nn.10-13; are contrary to Federal Judicial Center guidance that general causation can be an appropriate "[i]ssue[] to be taken up early," Ann. Manual Complex Lit. § 22.634 (4th ed.); predate the Rule 702 amendment emphasizing the importance of expert gatekeeping; are inconsistent with the MDL purposes of "promot[ing] the just and efficient conduct of such actions," 28 U.S.C. § 1407; and are inconsistent with the JPML's Order creating this MDL, JPML Order at 2.

II. General Causation Is Divisible from Other Issues.

Plaintiffs' argument that general causation cannot be divided from other issues is contradicted by the very arguments they made to obtain this MDL. In responding to an argument before the JPML that plaintiff- and defendant-specific issues would predominate across the cases,

¹ The one arguably relevant case, *In re Hair Relaxer*, is not instructive: the court summarily denied, in a minute order, the defendants' request to prioritize general causation challenges.

one of Plaintiffs' lead counsel emphasized the distinct and common general causation issues: "All of these actions . . . 'will share factual questions regarding *general causation* (in particular, *the biological mechanisms of the alleged injury*) [and] the *background science*.'" JPML Resp. Br. of Pls. Doffing et al. at 6 (Aug. 30, 2022); *see also* JPML Resp. Br. of Pl. Westwood at 2 (Sept. 2, 2022) (similar). That position contradicts Plaintiffs' argument now. Plaintiffs' reliance on pharmaceutical case law with the JPML also specifically contradicts their new suggestion that such case law is somehow inapplicable to this briefing. *See* Doffing Br. at 6-7 (quoting *In re Fluoroquinolone*); JPML Order at 2 (citing same case in creating MDL).

Nor is Plaintiffs' change in position supportable. Plaintiffs routinely argue that business decisions motivate unsafe designs, yet courts still address general causation as a distinct issue. That is because medical causation requires reliable expert testimony based on science, not merely on company documents or alleged admissions. *See, e.g.*, *City of Pomona v. SQM N. Am. Corp.*, 2023 WL 3143688, at *2 (9th Cir. Apr. 28, 2023) (despite plaintiff's presentation of "deposition testimony from multiple executives" as evidence of "design defect," plaintiff was "required" to present "expert testimony that established causation"). Moreover, Plaintiffs' contentions that "there is no useful distinction between general and specific causation"—and that "behavioral science questions" relieve Plaintiffs of their burden of proving general causation—are not supported by case law. *See, e.g.*, *Vanderwerf v. SmithKline Beecham Corp.*, 529 F. Supp. 2d 1294, 1306 (D. Kan. 2008) (expert testimony required to establish general (i.e., "testimony that [product] can cause suicide") and specific causation in suicidality cases).² Plaintiffs' Master Complaint further contradicts their arguments by alleging that general causation exists without pleading a single case-specific fact. *See, e.g.*, Second Am. Master Compl. ¶¶ 96-97, 117. Similarly, Plaintiffs invoke the "dozens of studies" cited in their Master Complaint to argue not only that they can muster sufficient scientific evidence to defeat a Rule 702 challenge on general causation, but also that they will prevail on the "[m]erits [c]onclusion" on that (divisible) question—in their words, "whether the [alleged] design defects are capable of causing the injuries alleged."³ Pls. Ltr. at 3.

III. Prioritizing General Causation Challenges Does Not Prejudge Plaintiffs' Case

Deciding to prioritize general causation does not "ask[] the Court to assume the likelihood that the defendant will prevail." Pls. Ltr. at 4-5. Rather, recognizing that Defendants' challenges will need to be resolved at some point, Defendants simply ask that the Court adjudicate the issue sooner rather than later. Plaintiffs' argument that early resolution would be "fruitless," because there will necessarily be "a battle of the experts for the jury to resolve," is itself a request that the Court prejudge—in their favor—their ability to meet their burden and flies in the face of the recent Rule 702 amendment emphasizing the importance of the Court's expert gatekeeping role. Given the overarching goals of this MDL, Plaintiffs offer no reasonable basis to avoid addressing the Rule 702 general causation challenge before full discovery is complete.

² Plaintiffs' cited cases either support Defendants' position that general causation is required when medical causation is at issue, and/or address wholly distinguishable fact patterns (such as physical injuries caused by a car accident). *See* Pls. Ltr. at 4 nn.5-6.

³ Reliance on Judge Kuhl's preliminary remarks on this issue at a CMC are unavailing; Judge Kuhl also said she would allow Defendants to file early expert challenges, and she did not have the benefit of briefing on the divisibility issue. *See* 12/7/23 JCCP CMC Tr. at 39:17-20.

Dated: January 19, 2024

Respectfully submitted,

/s/ Ashley Simonsen

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ATTESTATION

I, Ashley Simonsen, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: January 15, 2024

By: */s/ Ashley Simonsen*
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